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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
12 Against:

13 **CHRISTOPHER MALVAS GUCE**

14 Applicant/Respondent.

Case No. 2013-405

15 **STATEMENT OF ISSUES**

16 Louise R. Bailey, M.Ed., R.N. ("Complainant") alleges:

17 **PARTIES**

18 1. Complainant brings this Statement of Issues solely in her official capacity as the
19 Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs (the
20 "Board").

21 **Application History**

22 2. On or about September 29, 2008, the Board received an application for a Registered
23 Nurse License from Christopher Malvas Guce ("Respondent"). On or about May 10, 2010, the
24 Board received a Request for Reapply/Repeat Examination. On or about May 4, 2010,
25 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
26 representations in the application.

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JURISDICTION

3. Pursuant to Business and Professions Code ("Code") section 485, subdivision (b), on or about March 19, 2012, Respondent's application was denied and he was notified of the right to a hearing to appeal the denial.

4. On or about May 16, 2012, Respondent requested a hearing to appeal the denial of his application.

STATUTORY PROVISIONS

5. Code section 2736 provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under Code section 480.

6. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

7. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

8. Code section 480 states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

1 (1) Been convicted of a crime. A conviction within the meaning of this section
2 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
3 Any action that a board is permitted to take following the establishment of a
4 conviction may be taken when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal, or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under the
provisions of Section 1203.4 of the Penal Code.

5 (3)(A) Done any act that if done by a licentiate of the business or profession in
6 question, would be grounds for suspension or revocation of license.

7 (B) The board may deny a license pursuant to this subdivision only if the crime
8 or act is substantially related to the qualifications, functions, or duties of the business
or profession for which application is made.

9 **FIRST CAUSE FOR DENIAL OF APPLICATION**

10 **(Conviction of a Crime)**

11 9. Respondent's application is subject to denial under Code sections 2761,
12 subdivision (f), and 480, subdivision (a)(1), in that on or about February 28, 2000, in the case of
13 *People v. Christopher Malvas Guce* (Superior Ct. Santa Clara County, Case No. BBO 047586),
14 Respondent was convicted by the court on his plea of guilty of violating Vehicle Code
15 section 23152, subdivision (b) (operating a vehicle while under the influence of alcohol or drugs
16 while having a blood alcohol level of .08% or greater), a crime that is substantially related to the
17 qualifications, functions, or duties of a licensed registered nurse. The circumstance of the crime
18 is that on or about January 9, 2000, Respondent drove a vehicle while having a blood alcohol
19 level in excess of .08%.

20 **SECOND CAUSE FOR DENIAL OF APPLICATION**

21 **(Committed Acts Which If Done By a Licentiate)**

22 10. Respondent's application is subject to denial under Code section 480,
23 subdivision (a)(3)(A), in that he committed acts, which if done by a licentiate of the profession
24 would constitute grounds for discipline under the Code, as follows:

25 a. As set forth above in paragraph 9:

26 i. Section 2761, subdivision (f), conviction of a crime substantially related to the
27 qualifications, functions or duties of a license holder;

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